

### REMARKS

This application has been reviewed in light of the Final Office Action mailed on August 4, 2011. Claims 1-20 are pending in the application with Claims 1, 15, and 19 being in independent form. By the present Amendment, Claims 1, 15, and 19 have been amended for clarification purposes. No new matter has been added.

Claims 1, 11, and 16 were rejected under 35 U.S.C. 112, first paragraph as allegedly failing to comply with the written description requirement. The Examiner took issue with the word "directly" used in independent claims 1, 15, and 19. Applicants respectfully disagree with the Examiner. However, in order to expedite prosecution of this case, Applicants have removed such word from the claims. Applicants therefore respectfully request that the 112, first paragraph rejection be withdrawn.

Claims 1-20 were rejected under 35 U.S.C. 103(a) as being unpatentable over Sato et al. (U.S. Application No. 2002/0003798) in view of Varma (U.S. Patent No. 7,388,919).

Claim 1, as amended herein, recites, *inter alia*, as follows:

"...determining at the plurality of second stations into which one of at least three predetermined quality ranges the measured quality falls to selective prioritize transmitter behaviour based on the measured quality,

wherein the first station adopts a respective subsequent transmitter behaviour in response to any of the at least three predetermined quality ranges reported by each of the respective plurality of second stations." (Emphasis added.)

At page 6 of the present Final Office Action, the Examiner stated that Sato is silent in regards to "the subsequent transmitter behaviour includes adjusting at least one transmitter parameter of the first station such that the at least one transmitter parameter corresponding to the at least two non-contiguous ones of the quality ranges is identical." The Examiner relied on

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Varma to cure the deficiencies of Sato. However, neither Sato nor Varma, taken alone or in any proper combination, teach and/or suggest at least the feature added to independent Claim 1.

The applied combination of Sato and Varma fails to disclose and/or suggest at least "...determining at the plurality of second stations into which one of at least three predetermined quality ranges the measured quality falls to selective prioritize transmitter behaviour based on the measured quality, wherein the first station adopts a respective subsequent transmitter behaviour in response to any of the at least three predetermined quality ranges reported by each of the respective plurality of second stations," as recited in amended independent Claim 1.

As best understood, Varma relates to a system that adapts wireless link parameters for a wireless communication link. A measure is determined of errors occurring in communication over a wireless link. In a case that the measure of errors corresponds to more errors than a first predetermined threshold, communication changes from a first set of wireless link parameters to a second set of wireless link parameters. The second set of wireless link parameters corresponds to higher error tolerance than the first set of wireless link parameters. In a case that the measure of errors corresponds to fewer errors than a second predetermined threshold, communication changes from the first set of wireless link parameters to a third set of wireless link parameters. (Abstract).

In contrast, in the present disclosure, and specifically at paragraphs [0023] and [0025] of Applicants' published application (2008/0232291), it is stated, in pertinent part, that:

**"The microcontroller 32 of the mobile station MS 1 determines into which one of at least three quality ranges the measured quality falls.** An indication of the allocated quality range may, if appropriate, be forwarded to the base station BS. The indication may comprise an acknowledgement, such as a positive acknowledgement ACK or different levels of negative acknowledgements NACK 1, NACK 2 . . . NACKn. If appropriate the acknowledgement is sent as an uplink

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signal  $S_{up}$  at a predetermined time interval after the respective data packet transmission so that the base station can associate the acknowledgement with its data packet." (Emphasis added.)

"The method in accordance with the present invention makes a more efficient usage of the channel resources by employing a selective prioritising mechanism of acknowledgements, for example ACKs or NACKs, in the uplink feedback signalling. The selection process is based on the quality of signal reception in respective mobile stations MS." (Emphasis added.)

In other words, a more efficient usage of channels is employed by selectively prioritizing the transmitter behaviors based on the measured quality. Varma is not concerned with prioritizing any of the transmitted signals.

In addition, at pages 3-4 of the present Final Office Action, the Examiner stated that "it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the above teachings of Varma to Sato for the purpose of dynamically adapting a set of wireless link parameters that provide a better selection of throughput as well as adapting more efficiently to changes in communication conditions as suggested."

As indicated in MPEP §2143.01, "Obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either explicitly or implicitly in the references themselves or in the knowledge generally available to one of ordinary skill in the art." Further, "The mere fact that references can be combined or modified does not render the resultant combination obvious unless the prior art also suggests the desirability of the combination. *In re Mills*, 916F.2d 680, 16 USPQ2d 1430 (Fed. Cir. 1990).

Applicants respectfully submit that the Examiner's statement is merely conclusory and there is no showing by the Examiner that one skilled in the art would have been motivated to

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combine the teachings of Sato in order to have an alternative means for achieving the predictable result of dynamically adapting a set of wireless link parameters in the system of Varma. Further, there is no showing by the Examiner that such alternative means as taught by Varma would have been desirable or even operational (much less for providing better throughput).

Therefore, the Examiner failed to make a proper §103(a) rejection because it is not proper to take two elements and combine them because it is advantageous to do so. Such is not the patentability standard. The patentability standard is one of "obviousness," not one of "advantage." It is the duty of the Examiner to put forth a reason related to "obviousness." Thus, the "motivation to combine" argument asserted by the Examiner is not proper with respect to the Claims.

Thus, the applied combination of Sato and Varma, taken alone or in any proper combination, does not disclose all the features recited by independent Claim 1. Therefore, the withdrawal of the rejection under 35 U.S.C. §103(a) with respect to Claim 1 and allowance thereof is respectfully requested.

Independent Claims 15 and 19 include the same or similar limitations to those of Claim 1, and are allowable over the prior art of record for at least the same reasons presented above for the patentability of independent Claim 1. Accordingly, withdrawal of the rejection under 35 U.S.C. §103(a) with respect to Claims 15 and 19 and allowance thereof is respectfully requested.

Dependent Claims 2-14, 16-18, and 20, are allowable over the prior art of record for at least the same reasons presented above for the patentability of independent Claims 1, 15, and 19. Further, dependent Claims 2-14, 16-18, and 20 recite additional patentable features.

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Accordingly, the withdrawal of the rejection under 35 U.S.C. §103(a) with respect to dependent Claims 2-14, 16-18, and 20, and allowance thereof are respectfully requested.

In view of the foregoing, it is respectfully submitted that all the claims pending in this patent application are in condition for allowance. Reconsideration and allowance of all the claims are respectfully solicited.

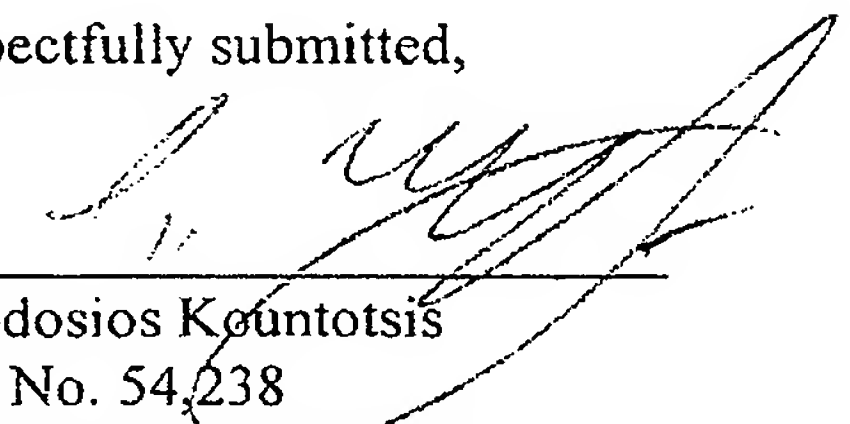
If, however, the Examiner believes that there are any unresolved issues requiring adverse final action in any of the claims now pending in the application, it is requested that the Examiner contact the applicant's attorney, so that a mutually convenient date and time for a telephonic interview may be scheduled for resolving such issues as expeditiously as possible.

In the event there are any errors with respect to the fees for this response or any other papers related to this response, the Director is hereby given permission to charge any shortages and credit any overcharges of any fees required for this submission to Deposit Account No. 14-1270.

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By:

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